

S.B. Civil Writ Petition No.846/05
Smt. Usha Sharma LR of deceased Dr.Subhash Chand
Sharma
Vs.
State of Raj. & Ors.

Date of Order : 28/03/2006

Hon'ble Mr. Justice Ajay Rastogi

Mr. N.K. Singhal, for petitioner
Mr. B.K. Sharma, Dy.G.A.

With the consent of parties, the writ petition is finally heard and decided at the stage of admission.

Instant petition has been filed questioning the validity of charge sheet dt.7th February, 2004 [Ann.3] and also claiming the pensionary benefits which became due to him on retirement after attaining the age of superannuation on 28th February, 2004 from the post of Junior Specialist [TB].

Petitioner, Dr.Subhash Chand Sharma was working as Junior Specialist and retired from service on attaining the age of superannuation, on 28th February, 2004, filed the present petition, but unfortunately, during the pendency he died on 24th December, 2005 and his wife Smt. Usha Sharma filed application for taking his legal heirs on record,

which was allowed by this court on 8th March, 2006 and the petition is being prosecuted by legal heir of deceased Dr. Subhash Chand Sharma.

Facts in brief are that when the petitioner was posted in Family Welfare Centre, Bundi during the period from 21st May, 1986 to 16th August, 1990, some irregularities were pointed out under the internal audit report, which was furnished to the department on 31st March, 1990. Till retirement from service, no explanation has ever been called for from the petitioner and three weeks before his retirement, he was served with the charge sheet for the alleged incident and on account of pending charge sheet, the State Government with-held his gratuity and so also commutation of pension. Since it was causing loss to the petitioner, he filed the present writ petition.

Shri N.K. Singhal, counsel for petitioner submits that the allegations levelled in the charge sheet were of incident of the period of 1986-90 almost after 14 years, when he was served with the charge sheet, its a fact which has come on record that charges were levelled against him, based on the internal audit report furnished to the department on 31st March, 1990 which clearly envisage that it was in their notice about the alleged allegation

levelled in the charge sheet. Apart from it, one Shri Shiv Charan Sharma who was working as UDC at the relevant time along with the petitioner action was initiated against him and after he retired from service on 31st July, 1997, a sum of Rs.3,09,435/- were adjusted from his terminal benefits by the State Government in terms of letter dt.6th December, 1999 of which reference has been made in Para 4 of the reply. In support of his contention, counsel has placed reliance upon the judgment of apex court in **P.V. Mahadevan Vs. MD. T.N. Housing Board [(2005) 6 SCC-636]** and the apex court held as under:

"The respondent submitted that the irregularity during the year 1990, for which disciplinary action had been initiated against the appellant in the year 2000, came to light in the audit report for the second half of 1994-95. But, Section 118 of the Tamil Nadu State Housing Board Act, 1961 specifically provides for submission of the abstracts of the accounts at the end of every year and Section 119 of the said Act relates to annual audit of accounts. Therefore, the explanation offered for the delay in finalising the audit account cannot stand scrutiny in view of the above two provisions. There is no acceptable explanation on the side of the respondent explaining the inordinate delay in initiating departmental disciplinary proceedings. The stand taken by the respondent in the counter-affidavit is not convincing and is only an afterthought to give some explanation for the delay".

Counsel further submits that charge sheet was served and allegation is yet to be examined after holding the procedure provided under the Rules of 1958, but before it could be further initiated, the writ petitioner died on 24th December, 2005. In view of change in circumstances, no inquiry atleast can now be initiated against him. In the absence whereof with-holding of retiral dues of late Dr. Subhash Chand Sharma is arbitrary and is in violation of principles of natural justice and so also provisions of Rajasthan Pension Rules, 1996.

Respondents have filed reply to the writ petition wherein it has been disputed that amount of Rs.3,09,435/- were adjusted from Shiv Charan on 6th December, 1999, but it has been averred that for the misconduct committed by the petitioner may be of remote past the authorities were under their legal competence to serve the charge sheet under the Rules of 1958, as such mere delay particularly when there is no such provision under the Rules, charge sheet can always be served.

Shri B.K. Sharma, Dy.G.A. counsel for respondents submits that nature of charges levelled against the petitioner clearly show that prima facie

financial irregularities were committed by the petitioner and such persons should not get scot free as it is a financial loss to the Government and in such circumstances, delay in the ordinary course should not be considered to be a basis from inquire into the matter.

I have considered the submission made by the parties and with their assistance perused the material on record.

This fact remained undisputed that the charges which were levelled against the petitioner are of the period during which he remained posted at Bundi from 1986-90 and which was in the notice of respondents of the alleged irregularity if at all there was any, on the basis of internal audit report which was furnished to their office on 31st March, 1990, no explanation has been furnished by the respondents in not initiating departmental action against the petitioner if at all there was any prima facie allegation against him after almost 14 years when he was in service.

Apart from it, the money was also recovered/adjusted from Shri Shiv Charan way back on 6th December, 1999 which has been accepted by the

respondents in para 4 of their reply itself demonstrates that atleast in 1999 it was in their notice. I do not find any justification to permit the respondents now to take any action against him under the impugned charge sheet. This has been examined by the apex court in the judgment [supra].

In my considered opinion, the delay in initiating action against the petitioner itself was sufficient to interfere in the charge sheet served upon the delinquent petitioner.

Apart from it, the petitioner Dr. Subhash Chand Sharma has died on 24th December, 2005 and no action can now be initiated against him after his death, by the respondents to inquire into the matter. In the absence whereof with-holding of retiral dues of the deceased and so also the pensionary benefits to which the family of the deceased are entitled for, is uncalled for.

Consequently, the writ petition is allowed and the charge sheet dt.7th February, 2004 [Ann.3] is quashed and the respondents are directed to release all terminal benefits due to the petitioner [Dr.Subhas Chand Sharma, now deceased] along with interest @6% from the date it became due till its

actual payment. The respondents shall ensure the compliance of this order within a period of two months. No costs.

[Ajay Rastogi], J.

FRB